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In the Matter of Factfinding:

-between-

CITY OF MONTEBELLO

EMPLOYER

-and-

MONTEBELLO MID-MANAGEMENT
ASSOCIATION

UNION

CASE NO. LA-IM-221-M

FINDINGS

CONCLUSIONS

RECOMMENDATIONS

DAVID B. HART
CHAIRMAN

HEARING HELD

October 12, 2016

Montebello, California

REPRESENTING:

CITY OF MONTEBELLO

Adrianna E. Guzman, Esq.
Liebert Cassidy Whitmore

REPRESENTING:

MONTEBELLO MID MANAGEMENT ASSOCIATION

Jeffrey W. Natke, Esq.
City Employees Associates

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JURISDICTION

This Fact Finding arises pursuant to Government Code Section 3505 concerning Impasse Procedures as administered by the (Public Employee Relations Board hereinafter may be referred to as "PERB") between the City of Montebello (hereinafter may be referred to as the "City") and the Montebello Mid Management Association (MMMA) (hereinafter may be referred to as the "Union").

Unable to reach a settlement on the current meet and confer process, David B. Hart was selected by the parties to act as an impartial Chairman and empowered him to render an advisory decision in accordance with the PERB'S rules concerning Fact Finding.

The Factfinding panel in addition to the Chairman, included Chief of Police Kevin L. McClure appointed by the City, and Brian Niehaus Field Representative appointed by the Union.

The Hearing was held on the date enumerated and the parties had ample time to present evidence including documents and witnesses.

The Chairman identifies the issue at hand as follows:

ISSUE

"Did the City of Montebello meet and confer in good faith with the Union?

If not, what shall be the remedy?

PERB Criteria:

AB 646 (now contained the PERB Regulations) lays out a set of 8 criteria to be used by a fact finding panel:

"(d) In arriving at their findings and recommendations, the fact finders shall consider, weigh, and be guided by all the following Criteria:

(1) State and Federal laws that are applicable to the employer.

- 1 (2) Local rules, regulations, or ordinances.
- 2 (3) Stipulations of the parties.
- 3 (4) The interests and welfare of the public and the financial
- 4 ability of the public agency.
- 5 (5) Comparison of the wages, hours, and conditions of employment
- 6 of the employees involved in the factfinding proceeding with the
- 7 wages, hours, and conditions of employment of other employees
- 8 performing similar services in comparable public agencies.
- 9 (6) The consumer price index for goods and services, commonly
- 10 known as the cost of living.
- 11 (7) The overall compensation presently received by the employees,
- 12 including direct wage compensation, vacations, holidays, and other
- 13 excused time, insurance and pensions, medical and hospitalization
- 14 benefits, the continuity and stability of employment, and all other
- 15 benefits received
- 16 (8) Any other facts, not confined to those specified in paragraphs
- 17 (1) to (7), inclusive, which are normally or traditionally taken
- 18 into consideration in making the findings and recommendations. "

19

20 BACKGROUND

21 The City of Montebello is a general-law city, and provides the full range of

22 municipal services: public safety (police and fire), public works (including its own

23 water system), parks and recreation, transit, community development and general

24 administrative and support services. It has more than 60,000 residents, is located

25 within Los Angeles County, and covers 8.25 square miles. The neighboring cities

26 adjacent to the City of Montebello are: City of Monterrey Park, City of Pico Rivera,

27 City of South El Monte and City of Commerce.

1 **THE DISPUTE:**

2 The factfinding concerns layoff effects bargaining between the City Of Montebello
3 and the Montebello Mid-Management Association.

4
5 **ANALYSIS**

6 It is generally believed that the best labor-management contracts are those that
7 are negotiated through bargaining without outside assistance. There are instances,
8 however, where the parties find it difficult or impossible to reach agreement by direct
9 negotiation.

10 In these situations the fact-finding process perhaps, is a way of settling this
11 dilemma. It is certainly not the panel's intention to prolong or bring obstacles into the
12 process towards bringing about settlement. It is also not the intent to split the baby so
13 to speak. The Chairman is not of the belief that would be beneficial to anyone
14 involved.

15 In rendering its findings of facts, the Chairman notes that the MMMA never
16 presented the City with any proposals to consider during effects bargaining. It did not
17 propose any alternative to the City's proposed date of layoff or proposed
18 reemployment terms. It also never proposed a change in who the City identified for
19 layoff and never asked for any additional benefits during effects bargaining. Instead,
20 the MMMA devoted its time to questioning the City about (1) the process used in
21 determining seniority, and (2) why it only used certain portions of the City's
22 municipal code to an employee.

23 The City determined seniority by looking at "time in classification." Because
24 the classification at issue was not part of the City's classified service, but part of the
25 unclassified service, it was not subject to the seniority determinations set forth in the
26 Municipal Code. The City's use of "time in classification" was a reasonable method
27 for determining seniority in this at-will classification. Likewise, the City's extension
28 of re-employment benefits to the laid-off employee, who was, in fact, not entitled to

1 that benefit under the Municipal Code, was a demonstration of good faith in an effort
2 to reach on agreement.

3 The City's last, best and final proposed offered: (1) 30 days' of notice of layoff
4 (or immediate release with 30 days pay in exchange for settlement and general release
5 of claims); and (2) re-employment rights as set forth in the Municipal Code. Had the
6 employee settled, the City would have extended City-paid medical coverage for
7 another two months. The MMMA, however, neither accepted nor rejected the City's
8 last, best and final offer because it provides an orderly, objective and fair process for
9 determining seniority among the unclassified service when faced with a layoff. It
10 also commits the City to rehire the laid off employee if it chooses to hire a
11 Management Analyst in the Transit Department within two years of the layoff.

12 The panel members have had an opportunity to concur or dissent on the issues
13 as put forth by the Chairman, and attached to these recommendations are those
14 notations.

15
16 **RECOMMENDATIONS**

17 **THE CHAIRMAN FINDS THE CITY MET AND CONFERRED**
18 **IN GOOD FAITH**

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20 Respectfully submitted;

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23 David B. Hart
24 Chairman

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27 Signed and dated this 18th day of October, 2016
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AS TO THE CHAIRMAN'S RECOMMENDATION

CONCUR _____

DISSENT **X** _____

S/ BRIAN NIEHAUS

Panel Member

Signed and dated this 18TH Day of October, 2016

MONTEBELLO MID-MANAGEMENT ASSOCIATION
PANEL MEMBER BRIAN NIEHAUS

1
2 AS TO THE CHAIRMAN'S RECOMMENDATION:
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4 CONCUR ☒ DISSENT
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14 Panel Member

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18 Signed and dated this 17 Day of October, 2016
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23 CITY OF MONTEBELLO

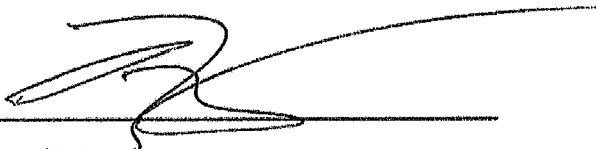
24 PANEL MEMBER KEVIN L. McCLURE
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AS TO THE CHAIRMAN'S RECOMMENDATION

CONCUR 'in part.

DISSENT 'in part.



Panel Member

Signed and dated this 18th Day of October, 2016

MONTEBELLO MID-MANAGEMENT ASSOCIATION
PANEL MEMBER BRIAN NIEHAUS

City of Montebello and the City of Montebello Mid-Management Association

Case No. LA-IM-221-M

Opinion of Panel Member Brian Niehaus

Concurring in Part and Dissenting in Part

While I agree with Chairman Hart that this matter is complicated by the lack of a formal written proposal from the Association prior to the hearing, the Association's Representative raised several issues during the hearing which merit some further consideration.

First, the Association's Representative raised a Levine issue. The record shows the Association previously requested a Levine hearing, which is essentially a pre-layoff due process hearing. For reasons unclear, the City denied the request. While this may be a legitimate issue in another venue, I concur with Chairman Hart, who concluded at hearing that this is not something within the scope of effects bargaining at issue here.

Second, the Association's Representative argued the City should have offered greater severance and/or not condition the pay and extension of medical benefits on signing a release of claims. Furthermore, the Association previously proposed broadening and extending the educational reimbursement to laid-off employees. It is not entirely clear whether either of these concessions from the City would break the current impasse. Nonetheless, dissenting in part, I recommend the City offer both the additional medical coverage without a release of claims and the extension of the educational reimbursement, as a possible avenue to agreement.

Finally, what is clear from the record is that the lack of a consolidated MOU, and the lack of a negotiated layoff policy in advance of any layoffs, makes it difficult for the Panel to address issues regarding effects bargaining due to the City Management's right to layoff.

The parties would be well served by negotiating into the MOU a more extensive provision when it comes to layoffs, e.g. severance and continuation of medical, paid notice period, seniority, re-assignment to vacant classifications, re-employment, reimbursement for job training, etc. Although this may not resolve the current impasse, it will undoubtedly benefit both parties should similar unfortunate circumstances arise.

This bill is submitted on behalf of the CHAIRMAN

Arbitrator David B. Hart
Address 3597 Trieste Dr
Carlsbad, Ca. 92010-2840

FACTFINDING LA-IM-221-M

UNION
CEA(MID-MANAGEMENT)

EMPLOYER
CITY OF MONTEBELLO

ARBITRATOR/COMPENSATION

Number of Hearing Days: 1—10/12/16 @\$1500.00=\$4500.00

STUDY, PREPARATION-ONE @\$1500.00=\$1500.00

Other

FEE \$ 3000.00

ARBITRATOR EXPENSES

Transportation 190X.54.5	<u>\$103.00</u>
Hotel	\$
Meals	\$
Other _____	\$

EACH PART IS RESPONSIBLE FOR \$1551.00

EXPENSES \$103.00
TOTAL \$3103.00

CHAIRMAN SIGNATURE 
SOCIAL-SECURITY NUMBER 480-40-5141
Prompt payment will be appreciated

DATE 10-18-16